

STATES DISTRICT COURT
DISTRICT OF MAINE

ROSEMARY S. KELLEY,

Plaintiff,

v.

MARY MAYHEW and
STATE OF MAINE, DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendants.

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Docket No. _____

NOTICE OF REMOVAL

To: The Judges of the United States District Court for the District of Maine.

Defendants State of Maine, Department of Health and Human Services (the “Department”) and Mary Mayhew, by and through counsel, hereby give notice of removal pursuant to 28 U.S.C. §§ 1441, *et seq.* of a civil action commenced in the Superior Court of Maine, Kennebec County, styled Rosemary S. Kelley v. Mary Mayhew and State of Maine, Department of Health and Human Services, AUGSC-CV-2012-00289. In support of removal, the Defendants respectfully state:

1. On November 26, 2012, the Office of the Attorney General received the Summons and Complaint in the above matter via United States mail from counsel for Plaintiff. Deputy Attorney General Paul Stern accepted service on behalf of both Defendants on December 11, 2012

2. The Complaint sets forth three counts. The first count alleges a claim for violation of the Maine Human Rights Act, 5 M.R.S. § 4551 *et seq.* The second count alleges

violation of the Americans with Disabilities Act, 42 U.S.C. § 12132. The third count alleges violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

3. The United States District Court has original jurisdiction over Plaintiff's claims under the Americans with Disabilities Act and the Rehabilitation Act, which are federal questions arising under the laws of the United States. 28 U.S.C. § 1331. Because Plaintiff's ADA and Rehabilitation Act claims arise under the laws of the United States, the Complaint is now removable. 28 U.S.C. § 1441(b). Because the Plaintiff's ADA and Rehabilitation Act claims are now removable, the remaining state law claim is also removable. 28 U.S.C. § 1441(c).

4. The United States District Court for the District of Maine embraces the place within which this action is currently pending in the Superior Court. Plaintiff resides in Knox County, and the actions complained of took place in Knox County. Pursuant to Local Rule 3(b), the case could be removed to either Bangor or Portland.

5. The Complaint is dated November 17, 2012, and was filed with the Kennebec County Superior Court on November 19, 2012. The Office of the Attorney General received a copy of the complaint by mail on behalf of the Department and Commissioner Mayhew on November 26, 2012. Thirty days have not expired since the Defendants' receipt of the Complaint.

6. Pursuant to 28 U.S.C. § 1446, removal is timely filed within thirty days after the receipt by the Defendants, through service or otherwise, of the initial pleading setting forth the removable claims for relief.

7. Pursuant to 28 U.S.C. § 1446, the Defendants this day are sending a copy of the Notice of Removal to the Kennebec County Superior Court and to Plaintiff's counsel.

8. Attached to this Notice of Removal as Exhibit A is the Declaration of Assistant Attorney General (“AAG”) Kelly L. Turner. Exhibits 1 and 2 of her Declaration are true copies of all documents filed in the Kennebec County Superior Court in the case of Rosemary S. Kelley v. Mary Mayhew and State of Maine, Department of Health and Human Services, Docket No. AUGSC-CV-2012-00289.

Based on the foregoing, the Defendants hereby give notice of the removal of the above-captioned action from the Maine Superior Court, Kennebec County, to the United States District Court for the District of Maine.

DATED: December 21, 2012

Respectfully submitted,

WILLIAM J. SCHNEIDER
Attorney General

/s/ Kelly L. Turner
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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2012, I electronically filed this Notice of Removal with attached exhibit, with the Clerk of the Court using the CM/ECF system, and mailed a copy to the Plaintiff's counsel and the Kennebec County Superior Court at the following addresses:

M. Elizabeth Gallie, Esq.
Maine Center on Deafness
68 Bishop Street
Portland, ME 04103
BGallie@mcdmaine.org

Kennebec County Superior Court
95 State Street
Augusta, ME 04330

/s/ Kelly L. Turner
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